

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

NEUROGRAFIX; NEUROGRAPHY
INSTITUTE MEDICAL ASSOCIATES,
INC.; and IMAGE-BASED
SURGICENTER CORPORATION,

Plaintiffs,

v.

TRUSTEES OF BOSTON UNIVERSITY;
BOSTON MEDICAL CENTER
CORPORATION; BOSTON
UNIVERSITY AFFILIATED
PHYSICIANS, INC.; and BOSTON
UNIVERSITY MEDICAL CENTER
RADIOLOGISTS, INC.,

Defendants.

Civil Action No. 12-11276-RGS

**DEFENDANTS' MOTION TO STAY THIS CASE PENDING
RESOLUTION OF RELATED MANUFACTURER CASES**

The defendants hereby move the Court to stay this case pending resolution of *NeuroGrafix et al. v. Philips Electronics North America Corporation et al.*, C.A. No. 12-11065 (D. Mass.) (“the *Philips* case”), and *NeuroGrafix et al. v. BrainLab, Inc. et al.*, C.A. No. 12-06075 (N.D. Ill.) (“the *BrainLab* case”).

In support of this motion, the defendants state that this case concerns claims against the customers and users of magnetic resonance imaging (“MRI”) equipment. Resolution of the *Philips* and *BrainLab* cases should conclusively resolve most, and potentially all, issues in this case (i) through judgments of invalidity, non-infringement, and, potentially, unenforceability; (ii) in the event that the plaintiffs prevail against Philips or BrainLab and are awarded damages, through exhaustion of the plaintiffs’ patent rights, barring further recovery from the defendants;

or (iii) through a global settlement with Philips or BrainLab with licenses for customers, which type of settlement the plaintiffs have already entered into with another manufacturer, specifically, Siemens Medical Solutions USA, Inc.

Accordingly, this customer case should be stayed under the customer suit doctrine and because the three factors considered in issuing a stay also weigh in favor of doing so, i.e., this case is in its infancy; the manufacturer cases would likely simplify issues and might actually render this case moot; and the plaintiffs would not suffer any undue prejudice if a stay were issued.

WHEREFORE, for the foregoing reasons and the reasons set forth in the defendants' accompanying memorandum of law, the Court should stay this case pending resolution of the *Philips* and *BrainLab* cases.

The defendants note that they have moved to dismiss the Amended Complaint (Dkt. #27). If the Court were to stay these proceedings, it would not need to address that motion at this time.

Request for Oral Argument

Pursuant to Local Rule 7.1(D), the defendants respectfully request that the Court schedule a hearing at its earliest convenience to address this motion. The defendants believe that oral argument will assist the Court in resolving the issues herein.

Respectfully submitted,

/s/ Philip C. Swain

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Dated: October 29, 2012

Attorneys for the Defendants

Certification Pursuant to Local Rule 7.1(A)(2)

The undersigned hereby certifies that counsel for the defendants conferred with counsel for the plaintiffs, but was unable to narrow or resolve the issues presented by this motion.

/s/ Philip C. Swain

Certificate of Service

I hereby certify that this document, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF), and paper copies will be sent to those indicated as unregistered participants on October 29, 2012.

/s/ Philip C. Swain